

HOUSE BILL No. 1222

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-25; IC 32-25.5.

Synopsis: Condominiums and homeowners associations. Makes the following amendments to the statutes concerning condominiums and homeowners associations: (1) Removes the requirement that the amendment of: (A) a condominium declaration; or (B) the governing documents of a homeowners association; requires the written consent of eligible mortgage holders. (2) Provides that a condominium co-owner or a homeowners association member is entitled to attend any meeting of the condominium's or homeowners association board, including an annual meeting. (3) Repeals provisions requiring condominium instruments and the governing documents of homeowners associations to include grievance resolution procedures. (4) Makes technical changes. Makes the following amendments to the statute concerning homeowners associations: (1) Specifies that certain provisions of the homeowners association statute apply to a homeowners association established before July 1, 2009, regardless of whether the members of the homeowners association have elected to be governed by the statute. (2) Provides that a homeowners association is not required to disclose communications that: (A) are initiated by the association or by a member of the association; and (B) concern suspected criminal activity by another member of the association. (3) Provides that in an enforcement action by the attorney general under the statute, the court may impose a civil penalty not exceeding \$500 on an individual determined by the court to have exercised a proxy in violation of the statute.

Effective: Upon passage; July 1, 2016.

Burton

January 11, 2016, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1222

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-25-7-7, AS ADDED BY P.L.141-2015,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 7. The declaration must contain a provision
4 allowing the co-owners to amend the declaration at any time, from time
5 to time, subject to the following:

6 (1) The declarant's consent to an amendment may be required if:
7 (A) the declarant owns one (1) or more units within the
8 condominium; and
9 (B) not more than seven (7) years have passed since the
10 original ~~governing documents were~~ **declaration was** first
11 recorded.

12 (2) The consent of the co-owners to the amendment has been
13 obtained as evidenced by either of the following:
14 (A) The vote of the co-owners at a meeting called for the
15 purpose of considering the amendment.
16 (B) A written instrument signed by the co-owners.

17 The declaration may not require that the consent of more than



1 seventy-five percent (75%) of the co-owners is required for
2 consent under this subdivision.

3 ~~(3) The consent of the eligible mortgage holders, as defined in the~~
4 ~~governing documents. The consent of an eligible mortgage holder~~
5 ~~must be indicated in a written instrument signed by the mortgage~~
6 ~~holder. However, a mortgage holder is considered to have~~
7 ~~consented to a proposed amendment if the mortgage holder does~~
8 ~~not respond to a written request for consent within thirty (30) days~~
9 ~~after the mortgage holder receives the request. The governing~~
10 ~~documents may not require that the consent of more than~~
11 ~~seventy-five percent (75%) of the eligible mortgage holders is~~
12 ~~required for consent under this subdivision.~~

13 ~~(4) (3) Notwithstanding subdivisions (1) through (3); and (2), the~~
14 ~~declaration may require the approval of at least ninety-five~~
15 ~~percent (95%) of the co-owners to convey common areas or to~~
16 ~~dissolve the condominium.~~

17 SECTION 2. IC 32-25-8-2.5, AS ADDED BY P.L.141-2015,
18 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2016]: Sec. 2.5. **(a) A co-owner of the condominium is**
20 **entitled to attend any meeting of the board of directors of the**
21 **condominium, including the annual meeting.**

22 **(b)** The minutes of meetings of the board of directors of a
23 condominium, including the annual meeting, must be made available
24 to a co-owner of the condominium for inspection upon request. The
25 requesting co-owner may make a request to inspect the minutes:

- 26 (1) in person;
- 27 (2) in writing; or
- 28 (3) by electronic mail.

29 The association of co-owners may charge the requesting co-owner a
30 reasonable copying fee if the co-owner requests a written copy of the
31 minutes.

32 SECTION 3. IC 32-25-8.5-9 IS REPEALED [EFFECTIVE JULY
33 1, 2016]. ~~Sec. 9: The condominium instruments must include grievance~~
34 ~~resolution procedures that apply to all members of the association of~~
35 ~~co-owners and the board.~~

36 SECTION 4. IC 32-25.5-1-1, AS AMENDED BY P.L.148-2015,
37 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 UPON PASSAGE]: Sec. 1. **(a) Subject to subsection (b),** this article
39 applies to the following:

- 40 (1) A homeowners association established after June 30, 2009,
41 that is authorized to impose mandatory dues on the homeowners
42 association's members.



- 1 (2) A homeowners association established before July 1, 2009:
 2 (A) if a majority of the members of the homeowners
 3 association elect to be governed by this article; or
 4 (B) if the number of members required by the homeowners
 5 association's governing documents elect to be governed by this
 6 article if a different number of members other than the number
 7 established in clause (A) is required by the governing
 8 documents.

9 (b) The following apply to all homeowners associations, **including**
 10 **a homeowners association described in subsection (a)(2), regardless**
 11 **of whether the members of the homeowners association have**
 12 **elected under subsection (a)(2)(A) or (a)(2)(B) to be governed by**
 13 **this article:**

- 14 (1) IC 32-25.5-3-3(g) through IC 32-25.5-3-3(m).
 15 (2) IC 32-25.5-3-9.
 16 (3) IC 32-25.5-3-10.
 17 (4) IC 32-25.5-4.
 18 (5) IC 32-25.5-5.

19 SECTION 5. IC 32-25.5-3-3, AS AMENDED BY P.L.141-2015,
 20 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2016]: Sec. 3. (a) A homeowners association shall prepare an
 22 annual budget.

23 (b) The annual budget must reflect:

- 24 (1) the estimated revenues and expenses for the budget year; and
 25 (2) the estimated surplus or deficit as of the end of the current
 26 budget year.

27 (c) The homeowners association shall provide each member of the
 28 homeowners association with:

29 (1) a:

- 30 (A) copy of the proposed annual budget; or
 31 (B) written notice that a copy of the proposed annual budget
 32 is available upon request at no charge to the member; and
 33 (2) a written notice of the amount of any increase or decrease in
 34 a regular annual assessment paid by the members that would
 35 occur if the proposed annual budget is approved;

36 before the homeowners association meeting held under subsection (d).

37 (d) Subject to subsection (f), a homeowners association budget must
 38 be approved at a meeting of the homeowners association members by
 39 a majority of the members of the homeowners association in attendance
 40 at a meeting called and conducted in accordance with the requirements
 41 of the homeowners association's governing documents.

42 (e) For purposes of this section, a member of a homeowners



1 association is considered to be in attendance at a meeting if the
2 member attends:

- 3 (1) in person;
4 (2) by proxy; or
5 (3) by any other means allowed under:
6 (A) state law; or
7 (B) the governing documents of the homeowners association.

8 (f) If the number of members of the homeowners association in
9 attendance at a meeting held under subsection (d) does not constitute
10 a quorum as defined in the governing documents of the homeowners
11 association, the board may adopt an annual budget for the homeowners
12 association for the ensuing year in an amount that does not exceed one
13 hundred percent (100%) of the amount of the last approved
14 homeowners association annual budget. However, the board may adopt
15 an annual budget for the homeowners association for the ensuing year
16 in an amount that does not exceed one hundred ten percent (110%) of
17 the amount of the last approved homeowners association annual budget
18 if the governing documents of the homeowners association allow the
19 board to adopt an annual budget under this subsection for the ensuing
20 year in an amount that does not exceed one hundred ten percent
21 (110%) of the amount of the last approved homeowners association
22 annual budget.

23 (g) Subject to subsection (k):

- 24 (1) the financial records, including all contracts, invoices, bills,
25 receipts, and bank records, of a homeowners association must be
26 available for inspection by each member of the homeowners
27 association upon written request; and
28 (2) the minutes of meetings of the homeowners association board,
29 including the annual meeting, must be available to a member of
30 the homeowners association for inspection upon the homeowners
31 association member's request, which may be submitted:
32 (A) in person;
33 (B) in writing; or
34 (C) by electronic mail.

35 **In addition to the right to inspect the meeting minutes of the**
36 **homeowners association board, a member of a homeowners**
37 **association has the right to attend any meeting of the**
38 **homeowners association board, including an annual meeting**
39 **of the board.**

40 A written request for inspection must identify with reasonable
41 particularity the information being requested. A member's ability to
42 inspect records under this section shall not be unreasonably denied or



1 conditioned upon provision of an appropriate purpose for the request.
 2 The homeowners association may charge a reasonable fee for the
 3 copying of a record requested under this subsection if the homeowners
 4 association member requests a written copy of the record.

5 (h) Subject to subsections (j) and (k), if there is a dispute between
 6 a homeowner and a homeowners association, the officers of the
 7 homeowners association must make all communications concerning the
 8 dispute available to the homeowner.

9 (i) Subject to subsections (j) and (k), the following apply:

10 (1) A homeowners association shall make all communications and
 11 information concerning a lot available to the owner of the lot or
 12 a home on the lot.

13 (2) If a homeowners association initiates communication with any
 14 member about another member's lot, the homeowners association
 15 must give a copy of that communication to the other member
 16 whose lot is the subject of the communication. **However, this**
 17 **subdivision does not apply if the communication concerns**
 18 **suspected criminal activity, or activity that is the subject of a**
 19 **law enforcement investigation, involving the member whose**
 20 **lot is the subject of the communication.**

21 (j) A homeowners association is not required to make:

22 (1) communications between the homeowners association and the
 23 legal counsel of the homeowners association; and

24 (2) other communications or attorney work product prepared in
 25 anticipation of litigation;

26 available to the owner of a lot or home.

27 (k) A homeowners association is not required to make available to
 28 a member for inspection any of the following:

29 (1) Unexecuted contracts.

30 (2) Records regarding contract negotiations.

31 (3) Information regarding an individual member's association
 32 account to a person who is not a named party on the account.

33 (4) Any information that is prohibited from release under state or
 34 federal law.

35 (5) Any records that were created more than two (2) years before
 36 the request.

37 (6) **Information that:**

38 (A) **is provided by a member of the homeowners**
 39 **association about another member of the homeowners**
 40 **association; and**

41 (B) **concerns suspected criminal activity involving the**
 42 **other member.**



1 Except as otherwise provided in this article (including subsection (j))
 2 and this subsection), other applicable law, or the governing documents
 3 of the homeowners association, a homeowners association is not
 4 required to retain a record of a written or electronic communication for
 5 any specific period of time. However, a homeowners association or a
 6 member of the board of a homeowners association shall retain for at
 7 least two (2) years after receipt, and during that period shall make
 8 available to a member of the homeowners association at the member's
 9 request, any written or electronic communication received by the
 10 homeowners association or board member that relates to a financial
 11 transaction of the homeowners association and that is not otherwise
 12 excepted from disclosure under this article or other applicable law.

13 (l) Nothing in this chapter:

14 (1) abrogates or eliminates provisions in homeowners association
 15 agreements that permit or require additional disclosure or
 16 inspection rights not required by this chapter; or

17 (2) prevents a homeowners association from agreeing to make
 18 disclosures or to provide inspection rights not required by this
 19 chapter.

20 (m) A homeowners association may not charge a fee for the first
 21 hour required to search for a record in response to a written request
 22 submitted under this chapter. A homeowners association may charge
 23 a search fee for any time that exceeds one (1) hour. The following
 24 provisions apply if a homeowners association charges a search fee:

25 (1) The homeowners association shall charge an hourly fee that
 26 does not exceed thirty-five dollars (\$35) per hour.

27 (2) The homeowners association may charge the fee only for time
 28 that the person making the search actually spends in searching for
 29 the record.

30 (3) The homeowners association shall prorate the fee to reflect
 31 any search time of less than one (1) hour.

32 (4) The total amount of the fee charged by the homeowners
 33 association for a search may not exceed two hundred dollars
 34 (\$200).

35 SECTION 6. IC 32-25.5-3-9, AS ADDED BY P.L.141-2015,
 36 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2016]: Sec. 9. The governing documents must contain a
 38 provision allowing the owners to amend the governing documents at
 39 any time, from time to time, subject to the following:

40 (1) The declarant's consent to an amendment may be required if:

41 (A) the declarant owns one (1) or more units within the
 42 subdivision; and



- 1 (B) not more than seven (7) years have passed since the
 2 original governing documents were first recorded.
- 3 (2) The consent of the owners to the amendment has been
 4 obtained as evidenced by either of the following:
- 5 (A) The vote of the owners at a meeting duly called for the
 6 purpose of considering the amendment.
- 7 (B) A written instrument signed by the owners.
- 8 The governing documents may not require that the consent of
 9 more than seventy-five percent (75%) of the owners is required
 10 for consent under this subdivision.
- 11 ~~(3) The consent of the eligible mortgage holders, as defined in the~~
 12 ~~governing documents. The consent of an eligible mortgage holder~~
 13 ~~must be indicated in a written instrument signed by the mortgage~~
 14 ~~holder. However, a mortgage holder is considered to have~~
 15 ~~consented to a proposed amendment if the mortgage holder does~~
 16 ~~not respond to a written request for consent within thirty (30) days~~
 17 ~~after the mortgage holder receives the request. The governing~~
 18 ~~documents may not require that the consent of more than~~
 19 ~~seventy-five percent (75%) of the eligible mortgage holders is~~
 20 ~~required for consent under this subdivision.~~
- 21 ~~(4)~~ **(3)** Notwithstanding subdivisions (1) ~~through (3)~~; **and (2)**, the
 22 governing documents may require the approval of at least
 23 ninety-five percent (95%) of the owners to convey common areas
 24 or to dissolve the plan of governance for the homeowners
 25 association.
- 26 SECTION 7. IC 32-25.5-4-1, AS ADDED BY P.L.141-2015,
 27 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2016]: Sec. 1. The attorney general may bring an action
 29 against a board of a homeowners association or an individual member
 30 of a board of a homeowners association if the attorney general finds
 31 that any of the following apply:
- 32 (1) The association's funds have been knowingly or intentionally
 33 misappropriated or diverted by a board member.
- 34 (2) A board member has knowingly or intentionally used the
 35 board member's position on the board to commit fraud or a
 36 criminal act against the association or the association's members.
- 37 (3) A proxy was exercised, **or was allowed to be exercised**, in
 38 violation of IC 32-25.5-3-10.
- 39 (4) A violation of IC 32-25.5-3-3 has occurred.
- 40 SECTION 8. IC 32-25.5-4-2, AS ADDED BY P.L.141-2015,
 41 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2016]: Sec. 2. (a) A court in which an action is brought under



1 this chapter may do the following:

2 (1) Issue an injunction.

3 (2) Order the board member to make restitution to the
4 homeowners association or to a member of the homeowners
5 association.

6 (3) Order a board member to be removed from the board.

7 (4) Order a board member to reimburse the state for the
8 reasonable costs of the attorney general's investigation and
9 prosecution of the violation.

10 (5) Impose a civil penalty on a member of the board of a
11 homeowners association **or on another individual, as**
12 **appropriate**, determined by the court to have taken an action
13 described in section 1(1), ~~or 1(2)~~, **or 1(3)** of this chapter.

14 (b) A civil penalty imposed under subsection (a)(5) may not exceed
15 five hundred dollars (\$500) for each action described in section 1(1),
16 ~~or 1(2)~~, **or 1(3)** of this chapter that the board member is determined by
17 the court to have taken. The proceeds of a civil penalty imposed under
18 subsection (a)(5) shall be deposited in the state general fund.

19 SECTION 9. IC 32-25.5-5-2, AS ADDED BY P.L.141-2015,
20 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2016]: Sec. 2. (a) As used in this chapter, "claim" refers to any
22 of the following:

23 (1) A claim arising out of or relating to the interpretation,
24 application, or enforcement of the governing documents.

25 (2) A claim relating to the rights or duties of the **homeowners**
26 association ~~of co-owners~~ or the board under the governing
27 documents.

28 (3) A claim relating to the maintenance of the subdivision.

29 (4) Any other claim, grievance, or dispute among the parties
30 involving the subdivision or the homeowners association.

31 (b) The term does not include an exempt claim.

32 SECTION 10. IC 32-25.5-5-8 IS REPEALED [EFFECTIVE JULY
33 1, 2016]. ~~Sec. 8: The governing documents must include grievance
34 resolution procedures that apply to all members of the homeowners
35 association and the board.~~

36 SECTION 11. **An emergency is declared for this act.**

